

The Chairman, Mark Maxwell, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M., on Tuesday, July 15, 2003.

PRESENT: Kenneth Courtney
Marcia Gies
Michael Hutson
Matthew Kovacs
Mark Maxwell
Dennis Kramer

ALSO PRESENT: Mark Stimac
Allan Motzny
Pam Pasternak

ABSENT: Christopher Fejes

Motion by Maxwell
Supported by Courtney

MOVED, to excuse Mr. Fejes from this meeting as he is out of town.

Yeas: All – 6

MOTION TO EXCUSE MR. FEJES CARRIED

ITEM #1 – APPROVAL OF MINUTES – MEETING OF JUNE 17, 2003

Motion by Courtney
Supported by Hutson

MOVED, to approve the minutes of the meeting of June 17, 2003 as written.

Yeas: 4 – Gies, Hutson, Maxwell, Courtney
Abstain: 2 – Kovacs, Kramer

MOTION TO APPROVE MINUTES AS WRITTEN CARRIED

ITEM #2 – APPROVAL OF ITEMS #3 THROUGH #6

Motion by Courtney
Supported by Gies

MOVED, that Items #3, and #4 are hereby approved in accordance with the suggested resolutions printed in the Agenda Explanation.

Yeas: All – 6

MOTION TO APPROVE ITEMS #3, AND #4 AS PRINTED IN THE AGENDA
EXPLANATION CARRIED

ITEM #3 – RENEWAL REQUESTED. RICHARD & MELANIE VARKLE, 54 E. SQUARE LAKE, for relief of the requirement to provide hard surface parking and an access drive.

Mr. Stimac explained that the petitioner is requesting relief to maintain a gravel parking lot. The Zoning Ordinance requires parking lots and drives to be hard surfaced. This Board originally granted this relief in May 1979 based on the historical significance of the site. A "Sense of Thyme" currently occupies the site. This item last appeared before this Board at the July 2000 meeting and was granted a three-year (3) renewal at that time. Conditions remain the same and we have no objections or complaints on file.

MOVED, to grant Richard & Melanie Varkle, 54 E. Square Lake a three-year (3) renewal of relief to maintain a gravel parking lot in lieu of the hard surface parking required by the Zoning Ordinance.

- Conditions remain the same.
- We have no objections or complaints on file.

ITEM #4 – RENEWAL REQUESTED. KENSINGTON COMMUNITY CHURCH, 1825 E. SQUARE LAKE, for relief of the 4'-6" high masonry screening wall required along the north and west side of off-street parking.

Mr. Stimac explained that the petitioner is requesting relief of the 4'-6" high masonry screening wall required along the north and west side of off-street parking. This Board has granted this relief since 1996. Relief was originally granted based on the fact that the wall adjacent to the wetlands could be a problem and that a variance renewal will determine whether natural conditions provide necessary screening. This item last appeared before this Board at the July 2000 meeting and was granted a three-year (3) renewal at that time. Conditions remain the same and we have no objections or complaints on file.

MOVED, to grant Kensington Community Church, 1825 E. Square Lake, a three-year (3) renewal for relief of the 4'-6" high masonry screening wall required along the north and west side of off-street parking.

- Conditions remain the same.
- We have no objections or complaints on file.

ITEM #5 – RENEWAL REQUESTED. TROY CHURCH OF GOD, 1285 E. WATTLES, for relief to maintain a 4'-6" high berm in lieu of the 4'-6" high masonry screening wall required along the north and east side of the parking lot.

ITEM #5 – con't.

Mr. Stimac explained that the petitioner is requesting relief to maintain a 4'-6" high berm in lieu of the 4'-6" high masonry screening walls required along the north and east side of the parking lot. This item last appeared before this Board at the July 2000 meeting and was granted a three-year (3) renewal at that time. Conditions remain the same and we have no objections or complaints on file.

Motion by Courtney
Supported by Gies

MOVED, to postpone the request of Troy Church of God, 1285 E. Wattles for relief to maintain a 4'-6" high berm in lieu of the 4'-6" high masonry screening wall required along the north and east side of the parking lot, until the meeting of August 19, 2003 to allow time to publish a Public Hearing, in order to consider making this a permanent variance.

Yeas: All – 6

MOTION TO POSTPONE REQUEST UNTIL THE MEETING OF AUGUST 19, 2003
CARRIED

ITEM #6 – RENEWAL REQUESTED. CALVARY CHAPEL, 1975 E. LONG LAKE, for relief to maintain landscaping in lieu of the 4'-6" high masonry-screening wall required adjacent to off-street parking.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to maintain landscaping in place of the 4'-6" high masonry-screening wall required adjacent to off-street parking. This Board has granted this relief since July 1989. This item last appeared before this Board at the meeting of July 2000 and was granted a three-year (3) renewal at that time. Conditions remain the same and we have no complaints or objections on file.

MOVED, to postpone the request of Calvary Chapel, 1975 E. Long Lake, for relief to maintain landscaping in lieu of the 4'-6" high masonry-screening wall required adjacent to off street parking, until the meeting of August 19, 2003 to allow time to publish a Public Hearing, in order to consider making this a permanent variance.

Yeas: All – 6

MOTION TO POSTPONE REQUEST UNTIL THE MEETING OF AUGUST 19, 2003
CARRIED

ITEM #7 – VARIANCE REQUESTED. G.J. SLAGON & ASSOCIATES, 1000 JOHN R., for relief of the 6' high masonry-screening wall required along the east and south property lines.

The Chairman moved this item to the end of the Agenda, Item #14, in order to allow the petitioner the opportunity to be present.

ITEM #8 – VARIANCE REQUESTED. TONY V' SUNROOOMS & SPAS, REPRESENTING SERGIO LOVISA, 929 PORTSMOUTH, for relief of the rear yard setback to construct an addition.

Mr. Stimac explained that the petitioner is requesting relief of the rear yard setback to construct an addition. The site plan submitted indicates a three-season room addition on the rear of the home with a proposed 35' rear yard setback. Section 30.10.02 of the Zoning Ordinance requires a 45' minimum rear yard setback in the R-1B Zoning Districts.

This item last appeared before this Board at the meeting of June 2003 and was postponed to allow the petitioner to determine if this addition could be constructed in a manner that would require a lesser variance. The petitioner has now submitted a revised plan for this addition, a copy of which is included in your packet.

Mr. Lovisa and his son in law were present. Mr. Lovisa's son in law stated that he is also Mr. Lovisa's attorney. He explained that Mr. Lovisa is on hospice and has great difficulty getting around. He further stated that this addition would be connected to Mr. Lovisa's bedroom, which would allow him to go out and enjoy the outdoors. Mr. Lovisa stated that all he wants is a sunroom.

Mr. Maxwell asked why Mr. Lovisa wanted this addition. Mr. Lovisa said that all he wants to do is to be able to get out and enjoy the sunshine instead of being locked into the bedroom.

Mr. Courtney asked for clarification regarding the statement that Mr. Lovisa was under hospice care. Mr. Lovisa's son in law said that he is presently under hospice and has been for the past year. Mr. Courtney said that it was very possible that Mr. Lovisa would not be around to enjoy this sunroom.

Mr. Kramer asked what the structure was in the southwest corner of the property and Mr. Lovisa's son in law stated that it was a wood shed.

Mr. Maxwell opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are two (2) written approvals on file, one of which was Mr. Lovisa's, which were received at the time of the original hearing. There are no written objections on file.

ITEM #8 – con't.

Mr. Kovacs asked if the sunroom could be put on the other side of the home. Mr. Lovisa's son in law stated that it would not be attached to Mr. Lovisa's bedroom and he did not feel that Mr. Lovisa would get the full benefit of this room. Mr. Lovisa's son in law said that if the room were put on this side of the property it would affect the flow of the property. He also explained that this home is a ranch, which has been improved over the years. Mr. Lovisa's son in law also said that it would not help Mr. Lovisa on this side of the home.

Mr. Kovacs said that he was just trying to understand the envelope of the home. Mr. Stimac said that looking at the plot plan, it appears that there is about a 48' setback to the existing home on the east side of the property, and it appears that there is about 50' on the west side, which would make about two or two and one-half feet difference.

Mr. Maxwell said that he thought this home was quite large compared to other homes in this area and asked about what the square footage of the home was. Mr. Lovisa's son in law said that he thought that it was about 2,300 square feet and that the home was added on to at the rear of the home. Mr. Maxwell then asked to see the aerial of the home. Mr. Maxwell said that the additions that have been added have now made this home quite a bit larger than other homes in the neighborhood and thought that perhaps a patio could be added without a variance. Mr. Stimac said that as long as the patio was uncovered and unenclosed it could be put in without a variance. Mr. Lovisa's son in law said that presently there is a patio, which is in the sun and becomes very warm. He also said that Mr. Lovisa has a disease, which makes him allergic to sunlight and cannot really go out and the sunroom as proposed would extend only to the end of the existing patio.

Mr. Maxwell stated that the entire Board is very sympathetic with Mr. Lovisa's situation; however, the Board has to make a decision based on how this variance will impact this property as well as the surrounding property in the neighborhood. Mr. Maxwell also said that he thought that if this variance was granted this property would be overbuilt. Mr. Lovisa's son in law said that this addition should be considered a refuge rather than a sunroom. He also indicated that he did not believe that the surrounding property would be affected in any way due to the fact that there is a 6' high privacy fence at the back of the property as well as a shelf of evergreens on the side. Mr. Maxwell then said he thought they could add door walls, which would provide fresh air and sunlight for Mr. Lovisa. Mr. Lovisa's son in law said that there is already an existing door wall and that basically Mr. Lovisa is just looking for a place to get out of his bed. Mr. Maxwell indicated that he thought the house was large enough as it was and would give Mr. Lovisa the refuge he desired.

Mr. Courtney asked how many people were living in the home. Mr. Lovisa's son in law said that presently there is himself, his wife and Mr. Lovisa. He also said that they have grown children who occasionally come and spend some time there. Mr. Courtney asked what is on the west side of the home and Mr. Lovisa's son in law stated that it

ITEM #8 – con't.

was a great room. Mr. Courtney then asked if a wheelchair was in use, which would make this area more accessible to Mr. Lovisa. Mr. Lovisa's son in law stated that there is problem because they have a dog and Mr. Lovisa hates dogs and therefore would not want to go to that side of the house.

Mr. Hutson said that he is having a problem granting this variance, because the Board has to make special findings. Mr. Hutson explained that a variance can be granted if there are practical difficulties that run with the land and based on the four special findings required, he cannot find any one that would apply to this request. Mr. Hutson went on to say that this home has been expanded to the maximum and because of this, he is having a difficult time supporting a variance. Mr. Lovisa's son in law stated that they are fairly new to Troy and are not responsible for the additions to this home. Mr. Hutson said that he understood that; however, he believes this is a very large variance request and does not feel that he could support this request.

Mrs. Gies asked if they had considered a retractable awning for this area. Mr. Lovisa's son in law said that in that case they would not have the air conditioning Mr. Lovisa would need, as he is very sensitive to the heat.

Mr. Courtney said that he thought that this addition could go on the other side of the home and a smaller variance would be required. Mr. Courtney also suggested that perhaps they could get rid of the dog.

Mr. Stimac explained that originally the request was for a 10' variance and now with the revised plans they are asking for an 8' variance.

Mr. Maxwell asked what the minimum amount of space was needed to allow for accessibility of the wheel chair as well as to allow for a covered space. Mr. Lovisa's son-in-law said that he thought that the plans allow for a double sliding glass door, which allows enough room for EMS to get in. He further explained that because the door is on the side facing west it goes onto the patio and they can roll a gurney straight in when needed. Mr. Maxwell then asked what the minimum amount they would wish to go out and Mr. Lovisa's son in law said that with the furniture that is usually put in a sunroom, he feels that a 10' sunroom would be required.

Mr. Courtney asked if the petitioner would like to postpone this request so that they could explore the possibility of moving this addition to the other side, which would require a smaller variance. Mr. Lovisa's son in law stated that it did not matter to him because he did not want the addition it was strictly for Mr. Lovisa's use and he would rather the matter was acted upon today. He also indicated that he was not home very much. Mr. Courtney asked if they would consider putting this addition on the other side of the home and Mr. Lovisa's son in law stated that he did not feel that it would benefit Mr. Lovisa in any way.

ITEM #8 – con't.

Mr. Kovacs stated that the petitioner had the sympathy of the Board; however, a medical condition could not be taken into consideration when considering a variance. Mr. Kovacs also pointed out that this addition could be moved to the other side of the property and a lesser variance would be required. Mr. Lovisa's son in law said that he thought that was a very good point, but the original request was for a 12' sunroom and now they are only asking for a 10' sunroom, and they would like to construct it on the side of the home originally requested. Mr. Kovacs explained that they would still be encroaching 8' and the Board is having a difficult time finding a hardship that runs with the land. Mr. Kovacs also said that if a lesser variance was asked for it was possible that the Board would consider that. Mr. Lovisa's son in law said that he felt that they could consider putting it on the east side of the home.

Mr. Maxwell asked if he wished to table this item and come back to the Board with a new plan. Mr. Lovisa's son in law said that he would want to resolve this issue tonight because of the season. Mr. Maxwell then asked Mr. Stimac if the petitioner could be accommodated tonight if he came up with a different plan. Mr. Lovisa's son in law said that he did not want to put the addition on the other side of the house, but would like to know how far he could bring the addition out in the original proposed location.

Mr. Hutson said that there are rules of procedure that need to be followed and he is opposed to granting any type of a variance without first seeing a specific plan and proposal for this addition. Mr. Hutson also said that he would not grant a variance and then wait for a plan to come in and try to fit in with the variance granted. Mr. Lovisa's son in law said that originally they had asked for a 10' variance and he felt that if they could go out with an 8' variance they would be happy. Mr. Hutson then said he would not negotiate a variance at this point.

Mr. Courtney then stated that if this variance was denied, he could come back to the Board with new request if it was substantially different. Mr. Courtney then asked if he would like this item tabled and Mr. Lovisa's son in law said that he would like to see it acted upon today.

Mr. Tony Rhea from Tony V's Sunrooms came in and stated he was late because he locked his keys in his car. Mr. Maxwell then brought Mr. Rhea up to date and told him that this variance request is too large and the Board will entertain a motion to either deny this request or table for one month if the project were to be moved to the other side of the home.

Mr. Rhea then asked for clarification of the proposal and said that there are times when people want a sunroom and times when someone needs a sunroom. Mr. Rhea said that if the addition were to be moved it would be defeating the purpose of the sunroom. Mr. Maxwell then stated that the house is very large and the proposed location of this sunroom would require a very large variance. Mr. Rhea then said that they would table this request and then come back with a different request.

ITEM #8 – con't.

Mr. Courtney then asked if the petitioner was sure they wanted this request tabled and Mr. Lovisa's son in law said that they would like an answer on it.

Mr. Stimac pointed out to the petitioner that according to the plans there are 21 ½' between the corner of the house and side property line. They could add 11 ½' to the side of the house without requiring a variance and would be adjacent to Mr. Lovisa's bedroom and would be on the south side of the house.

Mr. Maxwell stated that several options were offered and he believes that this is a very large home and thinks that this variance request is a large request.

Motion by Hutson
Supported by Maxwell

MOVED, to deny the request of Tony V's Sunrooms & Spas, representing Sergio Lovisa, 929 Portsmouth, for relief of the rear yard setback to construct an addition.

- Petitioner failed to demonstrate a hardship with the land.
- Variance would have an adverse effect to surrounding property.

Yeas: All – 6

MOTION TO DENY REQUEST CARRIED

ITEM #9 - VARIANCE REQUESTED. MR. & MRS. JOHN RANISATE, 2238 PRESCOTT DRIVE, for Board of Zoning Appeals approval to construct a hot tub enclosure (gazebo).

Mr. Stimac explained that the petitioner is requesting approval of the Board of Zoning Appeals to construct a hot tub enclosure. Based upon the type of structure and the proposed use the closest classification that we can put this structure in would be that of a gazebo. Section 40.57.10 of the Zoning Ordinance requires Board of Zoning Appeal approval for the placement of any detached accessory structure other than an antenna, cabana, garage or shed. Mr. Stimac also said that the Board only needs to find that this type of structure is appropriate for this location.

Mrs. Ranisate was present and stated that this structure complies with the restrictions found in the Ordinance for accessory structures. Mrs. Ranisate also said that she was aware of one (1) approval that the Building Department had received and she brought a paper with seven (7) additional signatures on it indicating approval. Mr. Maxwell then asked what the size of the structure was and Mrs. Ranisate stated that it is 140 square feet.

ITEM #9 – con't.

Mr. Courtney asked Mr. Stimac if this structure would comply with the lot coverage. Mr. Stimac said that the maximum lot coverage of a lot is 30% and even with the addition of this structure, it is far below 30%.

Mr. Kramer asked if a gazebo required a foundation. Mrs. Ranisate said that they are also planning to add a deck that will have 42" footings. Mr. Stimac said that all structures require a foundation, and this gazebo will sit on top and will be secured to the deck and could be unbolted and moved at a later date, although it is not considered a portable structure in any way. Mr. Kramer then stated that unlike home additions this gazebo would be considered less permanent.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There is one (1) written approval on file. There are seven (7) signatures brought in by Mrs. Ranisate indicating approval. There are no written objections on file.

Motion by Kovacs
Supported by Courtney

MOVED, to grant the request of Mr. & Mrs. John Ranisate, 2238 Prescott Drive, for Board of Zoning Appeal approval to construct a hot tub enclosure (gazebo).

- Request is not contrary to public interest.
- Plans look very nice.

Yeas: All – 6

MOTION TO APPROVE GAZEBO CARRIED

ITEM #10 – VARIANCE REQUESTED. MR. & MRS. FRED JAGOW, 2885 RENSHAW, for relief of the rear yard setback to construct a patio enclosure.

Mr. Stimac explained that the petitioner is requesting relief of the rear yard setback to construct a patio enclosure. The site plan submitted indicates a rear patio enclosure addition with a proposed 35' rear yard setback. Section 30.10.04 of the Zoning Ordinance requires a 40' rear yard setback in R-1C Zoning Districts. Mr. Stimac also explained that this subdivision was constructed under a previous edition of the Ordinance and they had 30' rear yard setbacks and 40' front yard setbacks. In 1972 the Ordinance was changed again and now requires a 40' rear yard setback and a 30' front yard setback.

ITEM #10 – con't.

Mr. & Mrs. Fred Jagow were present and stated that they have been in their home approximately 15 years. Mr. Jagow explained that originally the home had an aluminum awning over this deck, however it was damaged about five years ago because of a heavy snowfall. Mr. Jagow also said that some screws had pulled out of the siding and therefore he removed the awning two years ago. Mr. Jagow also said that they had tried using a regular patio umbrella but it was blown over constantly. Mr. Jagow indicated that the deck was deteriorating and they would like to put a sunroom on the back to be able to enjoy this property.

Mr. Courtney asked if the petitioner would go and put up another aluminum awning if this request was denied. Mr. Jagow said that he was trying to avoid what had happened before because now the siding was damaged and will need to be replaced. Mr. Stimac explained that even if they decided to put up the awning again, a variance would still be required as the only exception is for an uncovered deck.

Mr. Kramer asked for an explanation of the change in the Ordinance and Mr. Stimac explained that originally there was a provision in the Ordinance, called Note P, which attempted to make the setbacks more conforming. Note P basically said that if you lived in the R-1C District where all front yards on the block were 40' you could then have a 35' rear yard setback. Note P was later removed from the Ordinance and now the Board of Zoning Appeals is charged of looking at these individual cases as variance requests.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are three (3) written approvals on file. There are no written objections on file.

Motion by Courtney
Supported by Hutson

MOVED, to grant Mr. & Mrs. Fred Jagow, 2885 Renshaw relief of the rear yard setback to construct a patio enclosure that will result in a 35' rear yard setback where 40' is required.

- The homes in this area were constructed with larger front yard setbacks.
- The reduced rear yard setback is consistent with the other homes in the neighborhood.
- The variance is not contrary to public interest.

Yeas: All – 6

MOTION TO APPROVE REQUEST CARRIED

ITEM #11 – VARIANCE REQUESTED. ERIC RAUCH, OF DESINE, INC., 2955 E. LONG LAKE, for relief of Sections 21.30.02 and Section 39.70.04 of the Ordinance to construct a new Taco Bell Restaurant with drive-up facilities to replace the existing Taco Bell at 2955 E. Long Lake.

The property in question is in the B-2 (Community Business) Zoning District. Section 21.30.02 of the Zoning Ordinance requires that sites for restaurants with drive-up facilities be at least one acre in size and have at least 150' of frontage on a major thoroughfare. The site plan submitted indicates that this site is only .49 acres and has only 104.33' of frontage on Long Lake.

In addition, Section 39.70.04 requires that in addition to a 10' greenbelt across the frontage of the property, a minimum of 10% of the front or side yard of the site be maintained in landscape area. A site this size requires 2,134 square feet of landscaping. The site plan submitted indicates that approximately 1,050 square feet of landscaping are provided.

Mr. Stimac also noted that Section 40.21.31 of the Zoning Ordinance requires at least 31 parking spaces for a restaurant with 52 seats. The plans show that only 21 parking spaces will be available on the site. This item, however, would need to be addressed with City Council subsequent to the Boards action on these matters.

Mr. Maxwell asked if there was an area in the plans that designated a proposed greenbelt. Mr. Stimac said that a 10' greenbelt was proposed along the front of the property.

Mr. Eric Rauch of Desine, Inc. was present and stated that he had been approached by Mr. Pete Lyders, who owns 30 Taco Bells in this area. Mr. Rauch indicated that in January a new person was hired at Taco Bell and now the Corporate Office is requiring that all Taco Bells be modernized by adding a drive through and want to get rid of the mission style restaurant. Mr. Leiter said that he wanted the original Taco Bell demolished and the new style Taco Bell put in. Mr. Rauch also said that this Taco Bell is the smallest prototype that the Corporate Office would allow. The Corporate Offices have indicated that the old style of Taco Bell is no longer profitable, and this is the reason they wish to modernize these sites and no longer allow any Taco Bell to be constructed without a drive through. Mr. Rauch agreed that this property does not meet the requirements of the Ordinance regarding the size of the property and the amount of frontage that is allowed.

Mr. Rauch further stated that they do not meet the greenbelt requirements and also understands that they would have to go to City Council in order to seek a variance on the parking requirements. Mr. Rauch said that the parking area would not be utilized 80% of the time, but would be needed during their peak hours of business.

Mr. Maxwell asked Mr. Rauch to explain the flow of traffic. Mr. Rauch said that there will be stacking for nine (9) cars however, when in use these stacking spaces would

ITEM #11 – con't.

block the three (3) parking spaces for employees. Traffic flow would begin on Long Lake Road with ingress and egress. There would be two-way traffic along the frontage as well as a connection to Arby's that would allow for a cross connection. Mr. Maxwell then confirmed that there was two-way traffic all the way to the beginning of the drive through lane, on the east and north sides of the site. Mr. Maxwell then asked how long the drive through lane was and Mr. Rauch said it was approximately ninety feet. Mr. Rauch then said that the stacking lane would come around the north end of the property. Mr. Maxwell asked what the total space for the stacking lane was and Mr. Rauch said there would be nine cars, which would make the area approximately 180'.

Mr. Rauch said that because there is already a Taco Bell on this site he did not believe it would adversely affect the surrounding property in this area and would not unreasonably create congestion in the public streets. Mr. Rauch also said that the new structure would improve the area. Mr. Rauch further stated that the petitioner did not create the hardship, but Corporate is dictating that this building has to be updated or the franchise will not be renewed.

Mr. Kovacs asked what would happen if this variance was denied. Mr. Rauch said that the owner would try and sell it, but due to the fact that it is only a half-acre site and easily recognizable as a Taco Bell, he feels it will be very difficult to sell.

Mr. Courtney asked how many parking spaces are on the site currently. Mr. Rauch said that currently there are 24 spaces. Mr. Courtney also said that he feels that the congestion in the parking lot would increase with the reduction of 3 spaces. Mr. Rauch said that he did not think it would unreasonably increase the congestion.

Mr. Kramer asked how many seats were in the restaurant at this time. Mr. Rauch said that presently there is seating for 52 patrons. Mr. Kramer then stated that he did not feel there was enough parking to accommodate the number of seats in and asked if Mr. Rauch had any type of written order from the Corporate Office, which would allow for a reduction in seating. Mr. Rauch said that the Corporate Office dictates the seating and this is the smallest prototype of restaurant that the Corporate Office allows. Mr. Kramer said that even though City Council would have to act on the parking situation, he felt that perhaps the best use of this site would be some type of consolidation with other properties in the future. Mr. Rauch also said that in the "Corporate Manual" they like to see twenty (20) parking spaces and any additional parking is up to each municipality.

Mr. Courtney asked if the petitioner would still be required to go before City Council if the Board of Zoning Appeals denied his request. Mr. Stimac explained that the petitioner requires variances from both Boards, and that it did not matter which Board they appeared before first, although due to the number of items that need to be approved, Mr. Stimac felt that it would be better for him to come to this Board first. Mr. Stimac then clarified Mr. Courtney's question regarding how many parking spaces were

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available on this site presently. Mr. Stimac stated that currently there are about thirty-six (36) parking spaces on the site.

Mr. Maxwell asked if this restaurant originally was allowed to build on this site because there was no drive through and Mr. Stimac stated that was correct. Mr. Stimac said that drive through facilities take more space than a sit down restaurant.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There is one (1) written objection on file. There are no written approvals on file.

Mr. Maxwell asked how the owner feels that he can run this facility in a profitable manner. Mr. Rauch stated that neither the franchisee nor any representative of Taco Bell were present; however, Mr. Rauch felt he was qualified to answer Mr. Maxwell's question. Mr. Rauch said that right now about 70% of all business is done through the drive through and would rather ask for more stacking room than parking spaces. Mr. Rauch said that right now the business is profitable and the drive through would allow for more people to go through the facility, and they would not be at this location as long. Mr. Rauch also said that this Taco Bell has been here a long time and is in a good location. Mr. Maxwell then asked what his feelings were on the traffic situation. Mr. Rauch said that he thought it would be a safe ingress and egress and also there is cross access with Arby's to make the traffic flow easily.

Mr. Kovacs asked what this property could be if it was not developed as a Taco Bell. Mr. Stimac said that this property is in the B-2 classification, which allows for any retail sales activity. Mr. Stimac also pointed out that this site could be used for a sit down restaurant; however, could not be used as a drive up restaurant without a variance. Mr. Stimac asked of the 30 sites that they owned what the smallest site that they had developed other than this one. Mr. Rauch said that in Sterling Heights they had just put up a new Taco Bell on a .51-acre site.

Mr. Kramer said that he feels this is a self-imposed hardship and also that this site would be overbuilt. Mr. Kramer did not feel there was any reason for this Board to compromise.

Mr. Huston said that due to the fact that they don't have enough land, parking or landscaping he also feels that this site would be overbuilt. Mr. Hutson also stated that as far as he can see they are trying to squeeze a one-acre project into a half-acre site. Mr. Hutson said that he did not think this was a reasonable request.

Mr. Courtney said that he would like to see something from Taco Bell that they would not renew the franchise. Mr. Rauch said that this lease will run out in late 2004 and if this building is not updated, the lease will not be renewed. Mr. Rauch also said that this

ITEM #11 – con't.

is the smallest plan that he can provide because the Corporate Office dictates the amount of seating as well as the number of parking spaces to be provided.

Mr. Maxwell asked if there was anything available from the Corporate Office showing the flow of traffic during the peak hours. Mr. Rauch said that he was not aware of any traffic study ever being done. Mr. Maxwell said that he was concerned about the traffic that would be created with this drive through. Mr. Rauch then said that the reason they are asking for the landscape variance is to allow for more parking spaces.

Mr. Courtney said that he feels that if a drive through is put in here the traffic will increase a great deal. Mr. Courtney said that he also thinks that Mr. Kramer's comment to consolidate this property would probably be the best solution.

Motion by Kramer

Supported by Courtney

MOVED, to deny the request of Eric Rauch, of Desine, Inc., 2955 E. Long Lake, for relief of Sections 21.30.02 and Section 39.70.04 of the Ordinance to construct a new Taco Bell Restaurant with drive-up facilities to replace the existing Taco Bell at 2955 E. Long Lake.

- Petitioner did not demonstrate a hardship.
- Granting a variance would cause this site to be overbuilt.
- Variance request is excessive.
- Variance would have an adverse effect to surrounding property.

Yeas: 5 – Courtney, Gies, Hutson, Maxwell, Kramer

Nays: 1 – Kovacs

MOTION TO DENY REQUEST CARRIED

Mr. Kovacs said that even though he thinks this is a very large variance request, he would rather see a drive through put in, then a vacant building.

ITEM #12 – VARIANCE REQUESTED. WILLIAM CLIPPERT, 3581 W. BIG BEAVER, for relief of Section 40.50.04 of the Ordinance to construct a second floor addition to a legal non-conforming structure.

Mr. Stimac explained that the petitioner is requesting relief of the Zoning Ordinance to construct a second floor addition. Section 10.60.03 of the Zoning Ordinance requires a 50' front setback be provided from the West Big Beaver Road master thoroughfare plan right of way line. A survey in our files dated June 6, 2000, indicates that the existing house has a setback of 23' from the existing 60' of right of way resulting in an approximate 19' encroachment into the future 102' right of way. Because of the setback

ITEM #12 – con't.

deficiency and the age of the home, the existing home is a legal non-conforming structure. The proposed addition would add a second floor over this existing portion of the home. Section 40.50.04 prohibits expansions of non-conforming structures in a way that increases the non-conformity.

Mr. William Clippert and Mr. Jeff Mezel, the builder for Mr. Clippert was present and stated that this home is one of the original farmhouses that was built along Big Beaver Road. Mr. Mezel said that this home has a leaky roof, which needs to be replaced and because Mr. and Mrs. Clippert are expecting another child, they would like to add another bedroom upstairs when they have the roof replaced. Mr. Maxwell asked if this addition would increase the non-conformity and Mr. Mezel said it would not.

Mr. Hutson asked Mr. Clippert when the right of way was acquired. Mr. Clippert replied that it was in 2000. Mr. Hutson then asked if there were any additional plans to expand Big Beaver Road. Mr. Stimac said that the area had just been expanded, although eventually the ultimate plan was to put a boulevard all the way through to Adams. Mr. Stimac said that this most likely would not happen until the railroad bridge west of Adams was rebuilt as there is not enough room to put in an expansion. Mr. Hutson then asked if future expansion of Big Beaver would be on the north or south side of the road. Mr. Stimac said that most of the expansion was done on the north side of the street and any future expansion would probably have to be done on the south side.

Mr. Hutson asked if Mr. Clippert still thought this addition would be practical with the possibility of Big Beaver being widened. Mr. Clippert said that because of the addition to his family they need the extra space for a bedroom as well as more closet space. Mr. Clippert said that as far as he knows there are no plans in the works to rebuild the railroad bridge and therefore he feels comfortable in putting in this addition.

Mr. Kovacs asked what would happen if the right of way were to be expanded. Mr. Stimac said that the 102' right of way would go through the existing structure. Mr. Stimac further stated that if they require the additional right of way, the home would have to either be moved or removed from the right of way.

Mr. Courtney asked how much of the 102' right of way is required for traffic. Mr. Stimac said that generally a 102' right of way is enough for three lanes of traffic with a boulevard. Mr. Stimac said that the pavement would not be right at the 102' right of way line. Mr. Courtney then said it was possible that the right of way could end at the front door and there still would be enough pavement provided. Mr. Stimac said that portions of Big Beaver Road have been constructed without a 102' right of way.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There is one (1) written approval on file. There are no written objections on file.

ITEM #12 – con't.

Mr. Kramer asked what was adjacent to this property. Mr. Stimac said that the home next to it on the east was constructed with the proper setbacks and in the proper right of way line. Mr. Stimac also indicated that other houses in the area that are part of the original lots of Big Beaver Road are setback equal to Mr. Clippert's.

Motion by Kovacs
Supported by Gies

MOVED, to grant William Clippert, 3581 W. Big Beaver, a variance for relief of Section 40.50.04 of the ordinance to construct a second floor addition to a legal non-conforming structure.

- A variance is necessary for the preservation and enjoyment of substantial property rights possessed by the subject property and is not detrimental to the preservation of substantial property rights to other properties in the City.
- Variance is not contrary to public interest.

Yeas: 5 – Gies, Hutson, Kovacs, Maxwell, Courtney
Nays: 1 – Kramer

MOTION TO GRANT VARIANCE CARRIED.

ITEM #13 – VARIANCE REQUESTED. CARL SCHROEDER, 1911 RING ROAD, for relief of Section 30.20.09 of the Zoning Ordinance to construct an addition on to an existing industrial building.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct an addition on to an existing industrial building. Section 30.20.09 of the Troy Zoning Ordinance requires a minimum front yard setback of 50' in the M-1 (Light Industrial) Zoning District. The site plan submitted indicates that the proposed building addition would be within 40' of the front property line. Paragraph L of Section 31.30.00 of the Ordinance further requires that this front yard be maintained free of parking. The plans indicate parking spaces within 5' of the front property line.

Section 30.20.09 of the Ordinance also limits the lot coverage by buildings to be no more than 40% of the site. The site plan submitted indicates that the proposed addition would result in 41% of the lot being covered by buildings.

Mr. Brian Boucher of Ghafari Associates and Mr. Carl Schroeder were present. Mr. Boucher asked if the interior mezzanine was included in the parking calculation. Mr. Stimac said that it was included in the parking calculation, but was not included as part of the lot coverage. Mr. Boucher then said that he thinks that the mezzanine was not deducted from the total area of lot coverage, which he said was their error and that will now bring the lot coverage to 39% instead of 41%.

ITEM #13 – con't.

Mr. Boucher said that the Plumbing Industry Trade Training Center currently operates in Detroit and are looking to relocate and upgrade their facility and to provide a nicer, safer location to conduct this training. Mr. Boucher said that this training center trains plumbing journeymen and apprentices and have what they call a "dirty" side which is for the practical applications of welding and soldering and a "clean" side for the classroom side of the facility. Mr. Boucher said that the north addition of 5800 square feet would be used for welding and the front portion would be the classroom area, a conference room and the staff administration area. Mr. Boucher further explained that presently according to the Ordinance seventy-five parking spaces are required based on the size of the building and use. Mr. Boucher said that classes are organized around groups of eight so that at any one time there are no more than 32 students per class, and 6 to 8 staff members, which will bring the total number of spaces required around 40. Mr. Boucher said that once a month they provide training seminars for engineers but these seminars are usually held in the evening.

Mr. Boucher said that the original arrangement of this Industrial Park shows that all of the lots are quite symmetrical and at some point a second cul-de-sac was added and constructed to the north. Mr. Boucher said that this site clips the corner of this cul-de-sac, which created a hardship as to what portion of the site is unbuildable. Mr. Boucher said that also because this setback is measured off of the end of the cul-de-sac that visually the setback would still be maintained.

Mr. Kramer asked if the cul-de-sac as originally depicted still exists. Mr. Stimac said that the original developer of the property, Ring Screw Works, wanted to put an addition on to their property and could not because of the original cul-de-sac location so they shortened the road and re-dedicated a new cul-de-sac farther east of its original location. They then had the original cul-de-sac vacated so the public right of way for that cul-de-sac became part of their site. Mr. Stimac also said that some of the original paving of that cul-de-sac still remains.

Mr. Kramer said that he did not feel this was a valid request for a variance that would make the cul-de-sac less than usable. Mr. Boucher said that the cul-de-sac would not be affected in any way, they are just asking for seven parking spaces in the front of the building. Mr. Stimac said that they would be encroaching into the front setback but not into the street pavement.

Mr. Courtney asked if there was parking in the front of the building. Mr. Stimac explained that the parking is on the side and back of the building.

Mr. Kramer said that he would like to compliment the petitioner on the improvements to the site relative to the landscaping and traffic pattern. Mr. Kramer then asked how the parking was calculated. Mr. Boucher stated that it was based on the Light Industrial Zoning Classification. Mr. Stimac then explained the parking requirements for Industrial parking.

ITEM #13 – con't.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are no written approvals or objections on file.

Mr. Courtney asked if a variance would be required if the cul-de-sac was not in its present location. Mr. Stimac said that it is the location of the cul-de-sac clipping southwest corner of the site, which causes the increased setback. Mr. Stimac also said that he had gone through the figures provided and based on a 32,889 square foot footprint of the building, with a lot size of 81,927.52 square feet, he comes up with 40.14% of lot coverage.

Mr. Kramer said that he felt that a better solution would be for the petitioner to go before City Council and ask for a parking variance, which would allow for the cul-de-sac and landscaping requirements to be met. Mr. Maxwell said that he also thought there were three (3) different issues before the Board and felt that the Board should act on them. Mr. Kramer then asked if a recommendation could be made for this petitioner to go before City Council. Mr. Maxwell said that the requests could be voted on individually.

Mr. Hutson said that he did not have any qualms granting the petitioner's request. Mr. Kovacs asked why Mr. Kramer did not feel the parking setback variance would meet the requirements of a variance. Mr. Kramer said that he thinks that the setbacks are put there for a reason and thinks that a parking variance is the way to go.

Mr. Maxwell said that he did not see any negative impact on any of the surrounding area with the granting of this variance.

Motion by Courtney
Supported by Gies

MOVED, to grant Carl Schroeder, 1911 Ring Road, relief of Section 30.20.09 of the Troy Zoning Ordinance, to have a 40' setback to the building where a minimum front yard setback of 50' in the M-1 (Light Industrial) Zoning District; relief of Section 31.30.00, paragraph L of the Ordinance to allow parking within 5' of the front property line; and, relief of Section 30.20.09, which limits the lot coverage by buildings to be no more than 40% of the site.

- The location of the cul-de-sac creates an unusual setback on this site.
- The addition and parking will be in line with other buildings on this street.
- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.

Yeas: 5 – Gies, Hutson, Kovacs, Maxwell, Courtney
Nays: 1 – Kramer

ITEM #13 – con't.

MOTION TO GRANT VARIANCE AS REQUESTED CARRIED

Mr. Kramer stated that he felt that the parking variance should be eliminated.

ITEM #14 (ITEM #7) – VARIANCE REQUESTED. G.J. SLAGON & ASSOCIATES, 1000 JOHN R., for relief of the 6' high masonry-screening wall required along the east and south property lines.

The Chairman confirmed that the petitioner was not present in the audience.

Motion by Courtney
Supported by Gies

MOVED, to postpone the request of G.J. Slagon & Associates, 1000 John R., for relief of the 6' high masonry-screening wall required along the east and south property lines, until the meeting of August 19, 2003.

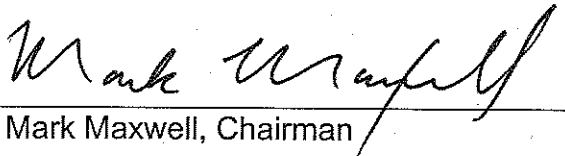
- To allow the petitioner the opportunity to be present.

Yeas: All – 6

MOTION TO POSTPONE REQUEST UNTIL MEETING OF AUGUST 19, 2003 CARRIED.

Mr. Kovacs stated that there was a good chance he would not be able to attend the meeting of August 19, 2003 as his wife is expecting a baby on that day.

The Board of Zoning Appeals meeting adjourned at 9:46 P.M.


Mark Maxwell, Chairman


Pamela Pasternak, Recording Secretary

MS/pp

